NO. 84243-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FEDERAL WAY SCHOOL DISTRICT,

Respondent,

v.

DAVID VINSON,

Petitioner.

DISTRICT'S SUPPLEMENTAL BRIEF

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I. *HOLIFIELD* DOES NOT PRECLUDE REVIEW OF FINAL HEARING OFFICER DECISIONS BY WRIT OF REVIEW.

A. *Holifield* deals with interlocutory review.

City of Seattle v. Holifield, 240 P.3d 1162 (2010), is distinguishable, because it arose out of Seattle's attempt to secure interlocutory review, of a discretionary evidentiary ruling, in a case that had not yet been completed. This Court recognized the posture of that case, and in that context, applied a rule "borrowed . . . from our rule governing interlocutory review . . . ." *Id.* at 1169 (citing RAP 13.5(b)). The rule formulated in *Holifield* is one that focuses particularly on issues relevant to the context of interlocutory appeal. In *that context*, correction of "mere errors of law" generally can, and should, await completion of the case, unless there is some immediate need for correction as identified by application of these factors. *Holifield* reflects the Court's reasoned judgment that the writ is not intended to facilitate *interlocutory* review of routine legal conclusions, particularly when review is available following completion of the case.

This interpretation of *Holifield* is buttressed by the Court's reliance upon *Commanda v. Cary*, 143 Wn.2d 651, 23 P.3d 1086 (2001)—another case arising in the context of interlocutory review. *Holifield* follows *Commanda*'s interpretation of RCW 7.16.040, requiring that the inferior tribunal "has (1) exceeded its authority *or* acted illegally, and (2) no appeal

nor any plain, speedy, and adequate remedy at law exists." *Holifield*, 240 P.3d at 1166 (citing *Commanda*). It is crucial to recognize that RCW 7.16.040 is not so limited in its scope; it provides for issuance of a writ *not only* when the inferior tribunal exceeds its authority or acts illegally, but *also* "to correct any erroneous or void proceeding, or a proceeding not according to the course of the common law." RCW 7.16.040. Presumably, *Commanda* was silent as to these additional grounds because they are not relevant to interlocutory review.[1] *Holifield*, on the other hand, expressly acknowledges that in other contexts, these additional grounds still support issuance of a writ of review:

> Finally, we note that these standards do not conflict with the other grounds articulated in RCW 7.16.040. They are also not redundant. The writ may still issue independently of the "acting illegally" grounds if an inferior tribunal, board, or officer (1) exceeds its jurisdiction, (2) *to correct erroneous or void proceedings*, or (3) a proceeding not according to the course of the common law, and if there is no appeal nor any plain, speedy, and adequate remedy at law.

240 P.3d at 1169 (emphasis added).

The present case is not one involving interlocutory appeal, but rather a final determination by an inferior tribunal. Far from a situation where a

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[1] Two other cases discussed at length in *Holifield–State v. Epler*, 93 Wn. App. 520, 522, 969 P.2d 498 (1999); *City of Seattle v. Keene*, 108 Wn. App. 630, 633, 31 P.3d 1234 (2001)– also arose in the context of interlocutory review, as did *City of Seattle v. Williams*, 101 Wn.2d 445, 447, 680 P.2d 1051 (1984), quoted in *Holifield* for the proposition that, "the only method of review of *interlocutory decisions* in courts of limited jurisdiction is still the statutory writ," 240 P.3d at 1168 (emphasis added).

party seeks review of a legal conclusion prior to completion of the case, this is the classic case for review by writ, in that there is a clear error of law, which cannot be corrected by any other means. RCW 7.16.040 authorizes issuance of a writ "to correct any erroneous . . . proceeding" and thus authorized issuance of the writ in this case.[2]

B. Even if *Holifield* applies to this case, its standard supports review of the Hearing Officer's decision in this case.

In the event the Court determines that *Holifield* applies beyond the context of interlocutory appeals, the formulation set forth in *Holifield* nevertheless supports the District's right to a writ of review in this case. Under *Holifield*, the District was entitled to a writ of review if the Hearing

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[2] This interpretation of *Holifield* is consistent with this Court's prior characterization of the writ. Lennart Vernon Larson's seminal 1945 *Washington Law Review* article surveying the extraordinary writs summarizes many of these cases, and includes this discussion of the writ of review:

> Section 1010 [recodified as RCW 7.16.120] makes clear that the statutory writ of certiorari is to provide a careful review of the proceedings before the inferior tribunal. . . . In the first place, *questions of law are decided.* In many cases involving administrative tribunals, questions of jurisdiction, legality of proceedings, and *interpretation and application of law have been decided.*

Lennart Vernon Larson, *Admin. Determinations and the Extraordinary Writs in the State of Wash.*, 20 Wash. L. Rev. 22, 31-32 (1945) (emphasis added) (cited with approval, *Citizens Council Against Crime v. Bjork*, 84 Wn.2d 891, 894, 529 P.2d 1072 (1975)).

More recently, in 1997, this Court confirmed that mere errors of law may be corrected by writ of review, even in the absence of any finding that the inferior tribunal's conclusion was arbitrary and capricious. *Hayes v. City of Seattle*, 131 Wn.2d 706, 713 n.4, 934 P.2d 1179 (1997) (emphasis added). Had this Court intended *Holifield* to eviscerate extensive prior law allowing review of errors of law following completion of the inferior tribunal's proceedings, one would have expected that decision to consider that prior law and to make that intention explicit. Instead, the Court clarified that the other grounds for issuance of a writ are unaltered by *Holifield*.

Officer "committed a probable error and the decision . . . substantially limits the freedom of [the District] to act." 240 P.3d at 1168-69. For the reasons set forth in the Court of Appeals' decision in this case, 154 Wn. App. 220, 230-31, and the District's prior briefing, the Hearing Officer's decision meets this standard. While finding that Vinson committed serious misconduct that served no legitimate educational purpose, the Hearing Officer nevertheless concluded, directly contrary to law, that there was not sufficient cause for Vinson's termination. Further, that decision quite obviously and substantially limited the District's ability to act in a manner that it was entitled to under law: It precluded Vinson's termination, forcing the District to continue to employ a teacher who had engaged in egregious and self-serving insubordination in breach of his teaching contract, when the law gives the District the right to discharge such an employee. 154 Wn. App. at 232-33. The Hearing Officer's error extinguished the District's legal right to terminate Vinson's employment, and, in the absence of any other remedy at law, this is precisely the kind of egregious error the writ of review was intended to allow the courts to correct.

II. RCW 28A.405.340 IS IRRELEVANT TO REVIEW VIA WRIT.

RCW 28A.405.340 is irrelevant, as it pertains to an *employee's* appeal. The courts have acknowledged the omission of an appeal procedure

for school districts in teacher discharge cases; speculated that the omission might have been inadvertent;[3] and proceeded to correct erroneous decisions via writ of review. *Howell; Coupeville Sch. Dist. v. Vivian*, 36 Wn. App. 728, 677 P.2d 192 (1984). This Court has cited *Howell* with approval, *Williams v. Seattle Sch. Dist.*, 97 Wn.2d 215, 218, 643 P.2d 426 (1982) (holding that former RCW 28A.67.073, denying school administrators an appeal right following transfer to a subordinate position, did not preclude judicial review by writ), and denied review of *Vivian*, 101 Wn.2d 1018 (1984). The Legislature has acquiesced in that approach for thirty years, and *Williams*'s approving citation to *Howell* demonstrates that RCW 28A.405.340 has no bearing on the question of whether review is available via writ.

This issue is discussed in further detail in prior briefing. Dist.'s Ans. to Pet. For Disc. Rev. at 15-18.

RESPECTFULLY SUBMITTED this 26th day of January, 2011.

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[3] *See Kelso Sch. Dist. v. Howell*, 27 Wn. App. 698, 700 n.2, 621 P.2d 162 (1980), for an accurate accounting of how this disparity came about.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that I sent *via Email and U.S. Mail* a true and accurate copy of the District's Supplemental Brief, to the following:

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